



[Billing code: 6750-01-S]
FEDERAL TRADE COMMISSION

**Agency Information Collection Activities;
Submission for OMB Review; Comment Request; Extension**

AGENCY: Federal Trade Commission (“FTC” or “Commission”).

ACTION: Notice.

SUMMARY: The FTC intends to ask the Office of Management and Budget (“OMB”) to extend for an additional three years the current Paperwork Reduction Act (“PRA”) clearance for information collection requirements contained in its Funeral Industry Practice Rule (“Funeral Rule” or “Rule”). That clearance expires on July 31, 2017.

DATES: Comments must be filed by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write “Paperwork Comment: FTC File No. P084401” on your comment, and file your comment online at <https://ftcpublic.commentworks.com/ftc/funeralrulepra2> by following the instructions on the web-based form. If you prefer to file your comment on paper, write “Paperwork Comment: FTC File No. P084401” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements for the Funeral Rule should be directed to Craig

Tregillus, Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Room 8607, Washington, DC 20580, (202) 326-2970.

SUPPLEMENTARY INFORMATION: On March 6, 2017, the FTC sought public comment on the information collection requirements in the Funeral Rule (“March 6, 2017 Notice”),¹ 16 CFR Part 453 (OMB Control Number 3084-0025). No relevant comments were received. Pursuant to the OMB regulations, 5 CFR Part 1320, that implement the PRA, 44 U.S.C. 3501 et seq., the FTC is providing this second opportunity for public comment while seeking OMB approval to renew clearance for the Rule’s information collection requirements.

Burden statement:

The estimated burden associated with the collection of information required by the Rule is 19,322 hours for recordkeeping, 103,345 hours for disclosure, and 38,644 hours for compliance training for a cumulative total of 161,311 hours. This estimate is based on the number of funeral providers (approximately 19,322),² the number of funerals per year (an estimated 2,626,418),³ and the time needed to fulfill the information collection tasks required by the Rule.

Recordkeeping: The Rule requires that funeral providers retain for one year copies of price lists and statements of funeral goods and services selected by consumers. Based on a

¹ 82 FR 12602 (March 6, 2017).

² The estimated number of funeral providers is from 2017 data provided on the National Funeral Directors Association (“NFDA”) website (see <http://www.nfda.org/news/statistics>) (within “General Funeral Service Facts”).

³ The estimated number of funerals conducted annually is derived from the National Center for Health Statistics (“NCHS”), <http://www.cdc.gov/nchs/>. According to NCHS, 2,626,418 deaths occurred in the United States in 2014, the most recent year for which final data is available. See, e.g., Table 1 (“Number of deaths, death rates, and age-adjusted death rates, by race and sex: United States, 1940, 1950, 1960, 1970, and 1980–2014”) (https://www.cdc.gov/nchs/data/nvsr/nvsr65/nvsr65_04.pdf) (June 30, 2016). Staff believes this is a conservative estimate because not all remains go to a funeral provider covered by the Rule (e.g., remains sent directly to a crematory that does not sell urns; remains donated to a medical school, etc.).

maximum average burden of one hour per provider per year for this task, the total burden for the 19,322 providers is 19,322 hours.

Disclosure: As noted above, the Rule requires that funeral providers: (1) maintain current price lists for funeral goods and services, (2) provide written documentation of the funeral goods and services selected by consumers making funeral arrangements, and (3) provide information about funeral prices in response to telephone inquiries.

1. Maintaining accurate price lists may require that funeral providers revise their price lists occasionally (most do so once a year, some less frequently) to reflect price changes. Staff conservatively estimates that this task may require a maximum average burden of two and one-half hours per provider per year. Thus, the total burden for 19,322 providers is 48,305 hours.

2. Staff retains its prior estimate that 13% of funeral providers prepare written documentation of funeral goods and services selected by consumers specifically due to the Rule's mandate. The original rulemaking record indicated that 87% of funeral providers provided written documentation of funeral arrangements, even absent the Rule's requirements.⁴

According to the rulemaking record, the 13% of funeral providers who did not provide written documentation prior to enactment of the Rule are typically the smallest funeral homes. The written documentation requirement can be satisfied through the use of a standard form, an example of which the FTC has provided to all funeral providers in its compliance guide.⁵ Based on FTC staff's continuing estimate that these smaller funeral homes arrange, on average,

⁴ In a 2002 public comment, the National Funeral Directors Association asserted that nearly every funeral home had been providing consumers with some kind of final statement in writing even before the Rule took effect. Nonetheless, in an abundance of caution, staff continues to retain its prior estimate based on the original rulemaking record.

⁵ The compliance guide is available at <http://business.ftc.gov/documents/bus05-complying-funeral-rule>.

approximately twenty funerals per year and that it would take each of them about three minutes to record prices for each consumer on the standard form, FTC staff estimates that the total burden associated with the written documentation requirement is one hour per provider, for a total of 2,512 hours $[(19,322 \text{ funeral providers} \times 13\%) \times (20 \text{ statements per year} \times 3 \text{ minutes per statement})]$.

3. The Funeral Rule also requires funeral providers to answer telephone inquiries about the provider's offerings or prices. Information received in 2002 from the NFDA indicates that only about 12% of funeral purchasers make telephone inquiries, with each call lasting an estimated ten minutes.⁶ Thus, assuming that the average purchaser within that subset makes one call per funeral to determine pricing,⁷ the estimated burden is 52,528 hours $(2,626,418 \text{ funerals per year} \times 12\% \times 10 \text{ minutes per inquiry})$. This burden likely will decline over time as consumers increasingly rely on the Internet for funeral price information.

In sum, the burden due to the Rule's disclosure requirements totals 103,345 hours $(48,305 + 2,512 + 52,528)$.

Training: In addition to the recordkeeping and disclosure-related tasks noted above, funeral homes may also have training requirements specifically attributable to the Rule. Staff believes that annual training burdens associated with the Rule should be minimal because Rule compliance is generally included in continuing education requirements for state licensing and voluntary certification programs. Staff estimates that, industry-wide, funeral homes would incur

⁶ No more recent information thus far has been available. The Commission invites submission of more recent data or studies on this subject.

⁷ Although consumers who pre-plan their own arrangements may comparison shop and call more than one funeral home for pricing and other information, consumers making "at need" arrangements after a death are less likely to take the time to seek pricing information from more than one home. Many fail to seek any pricing information by telephone. Staff therefore believes that, as to the estimated 12% of funeral purchasers who call to price shop, an average of one call per funeral is a conservative assumption.

no more than 39,360 hours related to training specific to the Rule each year. This estimate is consistent with staff's assumption for the current clearance that an "average" funeral home consists of approximately five employees (full-time and part-time employment combined), but with no more than four of them having tasks specifically associated with the Funeral Rule. Staff retains its estimate that each of the four employees per firm would each require one-half hour, at most, per year, for such training.⁸ Thus, total estimated time for training is 38,644 hours (4 employees per firm x ½ hour x 19,322 providers).

Labor costs: Labor costs are derived by applying appropriate hourly cost figures to the burden hours described above. The hourly rates used below are averages.⁹

Clerical personnel, at an hourly rate of \$11.33,¹⁰ can perform the recordkeeping tasks required under the Rule. Based on the estimated hours burden of 19,322 hours, estimated labor cost for recordkeeping is \$218,918.

The two and one-half hours required of each provider, on average, to update price lists should consist of approximately one and one-half hours of managerial or professional time, at \$42.82 per hour,¹¹ and one hour of clerical time, at \$11.33 per hour, for a total of \$75.56 per provider [(\$42.82 per hour x 1.5 hours) + (\$11.33 per hour x 1 hour)]. Thus, the estimated total

⁸ Funeral homes, depending on size and/or other factors, may be run by as few as one owner, manager, or other funeral director to multiple directors at various compensation levels. Extrapolating from past NFDA survey input, staff has theorized an "average" funeral home of approximately four employees (a funeral services manager, funeral director, embalmer, and a clerical receptionist) having tasks and training associated with Funeral Rule compliance. Compliance training for other employees (e.g., drivers, maintenance personnel, attendants) would not be necessary.

⁹ The mean hourly wages used for labor cost estimates in this Notice incorporate Bureau of Labor Statistics updates (last modified March 31, 2017) to the figures the FTC used for the March 6, 2017 Notice: Bureau of Labor Statistics, "May 2016 National Industry-Specific Occupational Employment and Wage Estimates, NAICS 812200 - Death Care Services," available at http://www.bls.gov/oes/current/naics4_812200.htm#11-0000.

¹⁰ Clerical related estimates are based on the mean hourly wage data for "receptionists and information clerks." *See id.*

¹¹ Managerial or professional estimates are based on the mean hourly wage data for "funeral service managers." *See id.* at *supra* note 9.

labor cost burden for maintaining price lists is \$1,459,970 (\$75.56 per provider x 19,322 providers).

The incremental cost to the 13% of small funeral providers who would not otherwise supply written documentation of the goods and services selected by the consumer, as previously noted, is 2,512 hours. Assuming managerial or professional time for these tasks at approximately \$42.82 per hour, the associated labor cost would be \$107,564.

As previously noted, staff estimates that 52,528 hours of managerial or professional time is required annually to respond to telephone inquiries about prices.¹² The associated labor cost at \$42.82 per hour is \$2,249,249.

Based on past consultations with funeral directors, FTC staff estimates that funeral homes will require no more than two hours of training per year of licensed and non-licensed funeral home staff to comply with the Funeral Rule,¹³ with four employees of varying types each spending one-half hour on training. Applying the assumptions stated above,¹⁴ FTC staff further assumes labor costing as follows for the affected employees' time for compliance training: (a) funeral service manager (\$42.82 per hour); (b) non-manager funeral director (\$26.21 per hour); (c) embalmer (\$20.31 per hour); and (d) a clerical receptionist or administrative staff member, at \$11.33 per hour.¹⁵ This amounts to \$972,573, cumulatively, for all funeral homes

¹² Although some funeral providers may permit staff whom are not funeral directors to provide price information by telephone, the great majority reserve that task to a licensed funeral director. Since funeral home managers are also licensed funeral directors in most cases, we have used, conservatively, the mean hourly wage for "funeral service managers," rather than "funeral directors," for this calculation.

¹³ Rule compliance is generally included in continuing education requirements for licensing and voluntary certification programs. Moreover, as noted above, the FTC provides its compliance guide to all funeral providers at no cost, and it is available on the FTC web site. *See supra* note 5. Additionally, the NFDA provides online guidance for compliance with the Rule: <http://www.nfda.org/onlinelearning-ftc.html>.

¹⁴ *See supra* note 8 and accompanying text.

¹⁵ Mean hourly wages, respectively, for a funeral service manager, funeral director, and embalmer. *See supra* note 9. *See supra* notes 9 and 10 regarding the mean hourly wage for "receptionists and information clerks."

$[(\$42.82 + \$26.21 + \$20.31 + \$11.33) \times \frac{1}{2} \text{ hour per employee} \times 19,322 \text{ funeral homes}]$.

The total labor cost of the three disclosure requirements imposed by the Funeral Rule is \$3,816,783 (\$1,459,970 + \$107,564 + \$2,249,249). The total labor cost for recordkeeping is \$218,918. The total labor cost for disclosure, recordkeeping, and training is \$5,008,274 (\$3,816,783 for disclosure + \$218,918 for recordkeeping + \$972,573 for training).

Capital or other non-labor costs: The Rule imposes minimal capital costs and no current start-up costs. The Rule first took effect in 1984 and the revised Rule took effect in 1994, so funeral providers should already have in place necessary equipment to carry out tasks associated with Rule compliance. Moreover, most funeral homes already have access, for other business purposes, to the ordinary office equipment needed for compliance, so the Rule likely imposes minimal additional capital expense.

Compliance with the Rule, however, does entail some expense to funeral providers for printing and duplication of required disclosures. Assuming, as required by the Rule, that one copy of the general price list is provided to consumers for each funeral or cremation conducted, at a cost of 25¢ per copy,¹⁶ this would amount to 2,626,418 copies per year at a cumulative industry cost of \$656,605 (2,626,418 funerals per year¹⁷ x 25¢ per copy). In addition, the funeral providers that furnish consumers with a statement of funeral goods and services solely because of the Rule's mandate will incur additional printing and copying costs. Assuming that those 2,512 providers (19,322 funeral providers x 13%) use the standard two-page form shown in the compliance guide, at twenty-five cents per copy, at an average of twenty funerals per year, the

¹⁶ Although copies of the casket price list and outer burial container price list must be shown to consumers, the Rule does not require that they be given to consumers. Thus, the cost of printing a single copy of these two disclosures to show consumers is *de minimis*, and is not included in this estimate of printing costs. Moreover, the general price list need not exceed, and may be still shorter than, the two-page model provided in the compliance guide.

¹⁷ See *supra* note 3 and accompanying text.

added cost burden would be \$12,560 (2,512 providers x 20 funerals per year x 25¢). Thus, estimated non-labor costs total \$669,165 (\$656,605 + 12,560).

Request for Comment:

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Write “Paperwork Comment: FTC File No. P084401” on your comment. Your comment – including your name and your state – will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Website, at <https://www.ftc.gov/policy/public-comments>.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/funeralrulepra2>, by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov/#!home>, you also may file a comment through that website.

If you file your comment on paper, write “Funeral Rule PRA Comment: FTC File No. P084401” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610, Washington, DC 20024. If possible, please submit your paper comment to the Commission by courier or overnight service.

Comments on the information collection requirements subject to review under the PRA

should additionally be submitted to OMB. If sent by U.S. mail, they should be addressed to Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission, New Executive Office Building, Docket Library, Room 10102, 725 17th Street, NW, Washington, D.C. 20503. Comments sent to OMB by U.S. postal mail, however, are subject to delays due to heightened security precautions. Thus, comments instead should be sent by facsimile to (202) 395-5806.

Because your comment will be placed on the publicly accessible FTC Website at <https://www.ftc.gov/>, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any "trade secret or any commercial or financial information which . . . is privileged or confidential" – as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2) – including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the

comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the public FTC Website – as legally required by FTC Rule 4.9(b) – we cannot redact or remove your comment from the FTC Website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC Website to read this Notice. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. For information on the Commission’s privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

David C. Shonka
Acting General Counsel.

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